

HOUSE BILL NO. 113

INTRODUCED BY R. DEVLIN

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE GRAZING DISTRICT LAWS TO REMOVE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM STATE DISTRICT LAWS EXCEPT FOR ADMINISTRATIVE ATTACHMENT PURPOSES; CHANGING THE REQUIREMENT FOR WRITTEN NOTICE TO THE COMMISSION MEMBERS, WITH REGARD TO MEETINGS, FROM 14 DAYS TO 7 DAYS; CONFORMING USES TO DEFINED TERMS; AMENDING SECTIONS 76-16-102, 76-16-103, 76-16-104, 76-16-106, 76-16-107, 76-16-108, 76-16-109, 76-16-111, 76-16-112, 76-16-113, 76-16-201, 76-16-202, 76-16-203, 76-16-206, 76-16-208, 76-16-209, 76-16-211, 76-16-212, 76-16-213, 76-16-301, 76-16-302, 76-16-303, 76-16-307, 76-16-309, 76-16-310, 76-16-316, 76-16-317, 76-16-318, 76-16-320, 76-16-323, 76-16-325, 76-16-401, 76-16-402, 76-16-403, 76-16-404, 76-16-406, 76-16-407, 76-16-408, 76-16-409, 76-16-410, 76-16-411, 76-16-412, 76-16-413, AND 76-16-414, MCA; REPEALING SECTION 76-16-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-16-102, MCA, is amended to read:

"76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit ~~grazing state~~ districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ~~ranch~~ properties as defined herein."

1

2 **Section 2.** Section 76-16-103, MCA, is amended to read:

3 **"76-16-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
4 definitions apply:

5 (1) "Animal unit" means one cow, one horse, or five sheep, 6 months of age or older.

6 (2) "Animal unit month" or "AUM" means one cow/calf pair, one horse, or five sheep, grazed
7 individually for 1 month, or an equivalency as determined by a local ~~grazing state~~ district.

8 (3) "Assessment" means a special levy imposed on permittee members by the state district to
9 raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees.

10 (4) "Commensurate property" means land that is privately owned or controlled and that is not
11 range.

12 (5) "Commission" means the Montana grass conservation commission provided for in 76-16-112.

13 (6) "Department" means the department of natural resources and conservation provided for in Title
14 2, chapter 15, part 33.

15 (7) "Dependent commensurate property" is commensurate property that:

16 (a) requires the use of range in connection with it to maintain its proper use;

17 (b) produces or whose owner furnishes as part of the owner's past customary practice the proper
18 feed necessary to maintain livestock during the time other than the established grazing period on the range;
19 and

20 (c) has been used in connection with the range ~~for a period of any 3 years or for any 2~~
21 ~~consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts~~
22 ~~organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of the~~
23 ~~state district districts.~~

24 (8) "Directors" means the board of directors of a state district provided for in 76-16-301.

25 ~~(9)~~(9) "Grazing preference" is a right to obtain a grazing permit from a state district, expressed
26 in animal unit months. Grazing preferences, expressed in AUMs, must be the basis for determining a
27 member's proportionate interest in ~~grazing state~~ district assets.

28 ~~(9)~~(10) "Permits" are evidence of grazing privileges granted by state districts.

29 ~~(10)~~(11) "Person" means a natural person or persons, unincorporated associations, partnerships,
30 corporations, and governmental departments or agencies.

(11)(12) "Range" is the land within a ~~grazing~~ state district upon which grazing permits are granted to maintain livestock through the established grazing period.

(12)(13) "Secretary" means the secretary of the Montana grass conservation commission.

(13)(14) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members."

Section 3. Section 76-16-104, MCA, is amended to read:

"76-16-104. Role of the commission ~~department~~. (1) The commission ~~department~~ shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of state districts that may be incorporated under this chapter.

(2) The commission ~~department~~ may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies."

Section 4. Section 76-16-106, MCA, is amended to read:

"76-16-106. Commission fees. (1) The commission may impose fees against the state ~~grazing~~ districts ~~of the state~~ in an amount not in excess of 10 cents per animal unit month of grazing preference, based upon the number of animal unit months per year for which the state district grants permits, to defray expenses incurred by the commission in carrying out its powers and duties under this chapter.

(2) These fees must be held in the state special revenue fund to be expended by order and direction of the commission for the operation and administration of the commission under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the state district is provided with a full report from the department of all money collected and expended by it for its fiscal year preceding that date, the commission may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district."

Section 5. Section 76-16-107, MCA, is amended to read:

"76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of

range must be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the state district. The commission may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts."

Section 6. Section 76-16-108, MCA, is amended to read:

"76-16-108. Nature of rights. (1) ~~Preferences~~ Grazing preferences or rights under this chapter through the creation of the state district or the issuance of permits based on AUMs of grazing preference are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the state district except as provided in this chapter.

(2) A person who chooses to become a member of a state district is bound by all the provisions of this chapter and is limited to the statutory remedies contained in this chapter, and a court has no jurisdiction to consider any right claimed under this chapter except by judicial review from the final decision of the commission as provided in this chapter."

Section 7. Section 76-16-109, MCA, is amended to read:

"76-16-109. Appeal procedure. (1) Notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the state district.

(2) A person affected by the decision of a state district may appeal to the commission, and the commission shall hear and decide all those appeals. An appeal from the decision of the state district to the commission may be taken by filing written notice of the appeal with the commission, by filing a copy of the notice of appeal with the secretary of the state district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the state district. The appellant shall also file with the commission proof by affidavit of the filing and service of the notice of appeal. The appeal to the commission must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the commission may, ~~at its discretion and~~ for good cause shown, permit additional testimony to be submitted."

1 **Section 8.** Section 76-16-111, MCA, is amended to read:

2 **"76-16-111. What constitutes receipt of notice.** In all cases where notices are given to permittees
3 under this chapter by ~~registered or~~ certified mail and addressed to the post-office address of the permittee
4 as shown by the records of the state district, the notices must be considered received by the permittee
5 when deposited in the United States post office by the state district or by the commission."
6

7 **Section 9.** Section 76-16-112, MCA, is amended to read:

8 **"76-16-112. Creation of Montana grass conservation commission -- membership -- meetings --**
9 **compensation.** (1) There is a Montana grass conservation commission. The commission ~~must be~~ is
10 composed of five members appointed by the governor to serve staggered 3-year terms. ~~Beginning on~~
11 ~~January 1, 2000, one member shall serve a 1-year term and two members shall serve 2-year terms, with~~
12 ~~assignment of terms based on a random drawing.~~

13 (2) (a) The governor, after giving full consideration to representation by both large and small
14 operators, shall appoint:

15 (i) two members who are either officers of or who serve on the board of directors of a state
16 ~~grazing~~ district;

17 (ii) two members who hold active grazing preference rights within a state ~~grazing~~ district; and

18 (iii) one member of the public who possesses a general understanding of the livestock industry and
19 the proper use of rangelands within state ~~grazing~~ districts for the purpose of livestock production.

20 (b) Ex officio members may be appointed by the commission as needed.

21 (3) Members may not be appointed for more than three consecutive terms. The commission shall
22 annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer
23 shall preside over all meetings of the commission, except that the vice presiding officer shall assume the
24 duties of the presiding officer in the absence of the presiding officer.

25 (4) The commission shall meet annually at the main offices of the department in Helena. The
26 commission may hold other meetings at times and places as necessary upon the call of the presiding
27 officer or the request of a majority of commission members and upon at least ~~14~~ 7 days' written notice
28 to the commission members of the time and place of the meeting. A majority of commission members
29 constitutes a quorum for the transaction of business. The commission shall keep accurate records of all
30 business that is considered, and the presiding officer shall sign all orders, minutes, and other documents

1 of the commission.

2 (5) Commission members may receive no compensation for their services, but members are
3 entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per
4 diem.

5 (6) The commission is allocated to the department for administrative purposes only as provided
6 in 2-15-121. The commission shall, if it determines that personnel services are required, hire its own
7 personnel, and 2-15-121(2)(d) does not apply. The secretary must be employed at the discretion of the
8 commission."

9

10 **Section 10.** Section 76-16-113, MCA, is amended to read:

11 **"76-16-113. Powers of commission.** The commission has all the powers enumerated in this
12 chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this
13 chapter, including but not limited to:

14 (1) conducting hearings on issues brought before the commission and conducting investigations
15 into matters affecting the commission or the operation of state ~~grazing~~ districts, including appeals of
16 decisions made by the board of directors of an individual state ~~grazing~~ district or other actions taken in
17 accordance with this chapter;

18 (2) administratively promoting and fostering an atmosphere of cooperation and mutual trust
19 between the federal bureau of land management, the United States forest service, the department, and
20 ~~cooperative~~ state ~~grazing~~ districts and upholding the terms and conditions of any memorandum of
21 understanding between those entities with regard to provisions noted in the Federal Land Policy and
22 Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter; ~~and~~

23 (3) prescribing methodologies to be used for the reallocation of grazing preference within
24 cooperative state ~~grazing~~ districts that, for whatever reason, no longer have access to historical grazing
25 preference records;

26 (4) preparing and standardizing various forms to be used by the state districts and supervising or
27 regulating the organization and operation of state districts;

28 (5) issuing citations directed to any person requiring the person's attendance before the
29 commission and subpoenaing witnesses and paying expenses that would be allowed in a court action;

30 (6) requiring an officer or director of a state district to submit records of the state district to the

1 commission for the purpose of aiding an investigation conducted by the commission;
2 (7) requiring state districts to annually furnish itemized financial reports; and
3 (8) cooperating and entering into agreements on behalf of a state district, with its consent, with
4 any governmental subdivision, department, or agency in order to promote the purposes of this chapter."
5

6 **Section 11.** Section 76-16-201, MCA, is amended to read:

7 **"76-16-201. Procedure to incorporate state district.** (1) If three or more persons who own or
8 control commensurate property and are livestock operators within the area proposed to be created into
9 a state district decide to incorporate a state district, they shall submit a statement in writing to the
10 commission together with a plat showing the proposed boundaries of the area.

11 (2) The statement ~~shall~~ must set forth the name of the proposed state district, the county or
12 counties in which the proposed state district is located, and the names and addresses of all operators of
13 land and livestock units within the area. The commission may require any additional information it
14 considers necessary.

15 (3) On receipt of the statement and plat and any additional information, the commission shall fix
16 a time and place of a hearing for approval within the state district or county, which may not be less than
17 30 days or more than 60 days after receipt of the statement."
18

19 **Section 12.** Section 76-16-202, MCA, is amended to read:

20 **"76-16-202. Notice and hearing on question of incorporation.** (1) The persons deciding to
21 incorporate the state ~~grazing~~ district shall cause notice of the hearing to be given by publishing a notice
22 prescribed by the commission once a week for 2 consecutive weeks, ~~the~~ in a newspaper of general
23 circulation in the area. The first publication to must be at least 30 days prior to the date of hearing, ~~in a~~
24 ~~newspaper of general circulation in the area.~~

25 (2) The commission shall hear evidence offered in support of or in opposition to the creation of
26 the state district and shall make a full inquiry into the advisability of its creation."
27

28 **Section 13.** Section 76-16-203, MCA, is amended to read:

29 **"76-16-203. Certificate of approval.** If the creation of the state district appears feasible, beneficial,
30 and desirable to those who own or control more than 50% of the lands to be included in the state district,

1 the commission may issue a certificate of approval."

2

3 **Section 14.** Section 76-16-206, MCA, is amended to read:

4 **"76-16-206. Amending articles of incorporation.** (1) A state district may amend its articles of
5 incorporation by a two-thirds vote of all members present at any regular or special meeting of its members
6 and the approval of the commission. The only notice of the meeting that is necessary is the notice of
7 meetings of members as required by the bylaws of the state district. The amended articles of incorporation
8 and bylaws must be submitted to the commission for approval. Upon approval, the commission shall issue
9 a certificate of approval. The amended articles of incorporation must be filed by the secretary of state
10 without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of
11 incorporation are amended, the amendment must be filed with the county clerk or clerks.

12 (2) Upon the filing of the amended articles with the secretary of state and the proper county clerk
13 or clerks, the state district possesses the same powers and is subject to the same obligations as if
14 incorporated under this chapter."

15

16 **Section 15.** Section 76-16-208, MCA, is amended to read:

17 **"76-16-208. Adoption of bylaws and periodic review -- annual report.** (1) A state district
18 incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the
19 commission. The bylaws may be amended or revised with the approval of the commission. Each
20 incorporated state district shall review and update its bylaws to ensure compliance with this chapter and
21 the general laws of this state. ~~The first review and update must be completed no later than January 1,~~
22 ~~2001. Subsequent~~ A review and update must be completed at reasonable intervals, not to exceed 5 years.

23 (2) Each state district incorporated under this chapter shall report annually to the commission any
24 changes to the allocation of grazing preferences, redefinitions of grazing allotment boundaries, or
25 dispositions of base properties within the state district. The annual reports must include an updated plat
26 depicting current allocation of grazing preferences, grazing allotment boundaries, and a list of all members
27 running in common allotments where more than one member may have grazing preferences."

28

29 **Section 16.** Section 76-16-209, MCA, is amended to read:

30 **"76-16-209. Alteration of state district.** (1) A state district may change the boundaries of the

1 state district, merge with another state district organized under this chapter, or subdivide.

2 (2) A merger may not be made unless consented to by a majority of the members of each merging
3 state district and approved by the commission after a hearing.

4 (3) A subdivision may not be made unless consented to by a majority of the members in the
5 affected area and approved by the commission after a hearing."

6

7 **Section 17.** Section 76-16-211, MCA, is amended to read:

8 **"76-16-211. Dissolution of state district.** (1) If a state district ceases to function in accordance
9 with its bylaws and this chapter and it appears to the commission that the reinstatement and future
10 operation of the state district is no longer feasible, beneficial, and desirable to the majority of members
11 of the state district, the commission, after a hearing and upon 30 days' notice in writing, published for 2
12 consecutive weeks in a newspaper of general circulation in or nearest to the state district, may dissolve
13 the state district.

14 (2) A notice of the dissolution must be filed by the commission with the secretary of state and
15 the clerk and recorder of the county or counties in which the state district is located."

16

17 **Section 18.** Section 76-16-212, MCA, is amended to read:

18 **"76-16-212. Distribution of state district assets.** (1) When a hearing on the request for dissolution
19 has been held before the commission and the ~~board's~~ consent of the board of directors has been given,
20 the directors shall distribute the assets of the state district, either in items of property or in cash or in both.
21 Distribution must first be made with the approval of the commission to creditors up to the amount of their
22 claims. Distribution must then be made with the approval of the commission to permittee members upon
23 the basis of their proportionate interest in the assets.

24 (2) If assets must be liquidated, the directors shall offer them for sale at public auction or through
25 another competitive bidding procedure after publication of a notice of the sale once a week for 2
26 successive weeks in a newspaper of general circulation within the state district. State district ~~District~~
27 members holding grazing preference directly proportional to and associated with the assets being liquidated
28 must be offered an opportunity to meet the highest bid submitted through the bidding process."

29

30 **Section 19.** Section 76-16-213, MCA, is amended to read:

1 **"76-16-213. Final report on dissolution proceedings.** A final report of all dissolution proceedings
2 must be made to the ~~department~~ commission by the directors. Upon the approval of the report, the
3 ~~department~~ commission shall order the state district dissolved."

4
5 **Section 20.** Section 76-16-301, MCA, is amended to read:

6 **"76-16-301. Powers and duties of directors.** The directors of the state district shall manage and
7 exercise the powers of the state district subject to its bylaws and to the regulation of the commission
8 ~~department~~ as provided in this chapter."

9
10 **Section 21.** Section 76-16-302, MCA, is amended to read:

11 **"76-16-302. Membership in state district.** (1) Membership in ~~the~~ a state district is limited to
12 persons engaged in the livestock business who own or lease forage-producing lands within or near the
13 state district, except that the agent of a person entitled to membership in the state district may become
14 a member in place of the agent's principal.

15 (2) If an agent becomes a member, the agent's qualifications for membership and the agent's
16 obligations to and the privileges in the state district must be measured by those that the agent's principal
17 would have had if the principal had elected to become a member. An agent and the agent's principal may
18 not both be members of the state district unless the agent has individual qualifications for membership that
19 are separable from and independent of those of the principal.

20 (3) Livestock producers owning or controlling base property within the designated boundaries of
21 the state district and who held grazing preference during the preceding grazing season or at the time of
22 voting must be designated as permittee members."

23
24 **Section 22.** Section 76-16-303, MCA, is amended to read:

25 **"76-16-303. Voting rights.** Only permittee members in good standing as set forth in the state
26 district bylaws are entitled to vote on all issues submitted to a vote of the members. Individuals or
27 livestock producers who operate on temporary permits may not vote. A permittee member has only one
28 vote. Voting by proxy may not be permitted unless clearly outlined procedures for proxy voting are
29 incorporated into the state district bylaws."

1 **Section 23.** Section 76-16-307, MCA, is amended to read:

2 **"76-16-307. Leasing of state lands.** State land that is situated within the boundaries of a ~~grazing~~
3 state district created under this chapter may be leased by one or more members of a ~~grazing state~~ district
4 if the lease is in accordance with existing laws and regulations of the department. The board of directors
5 of a ~~cooperative~~ state district may assist members of a ~~grazing state~~ district in acquiring and administering
6 a state grazing lease. The commission shall require that all state districts comply with this section."

7
8 **Section 24.** Section 76-16-309, MCA, is amended to read:

9 **"76-16-309. Knowledge of state district boundaries responsibility of livestock owner.** A person
10 herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary
11 lines of the state district."

12
13 **Section 25.** Section 76-16-310, MCA, is amended to read:

14 **"76-16-310. Permit required to run livestock in state district.** (1) ~~No~~ An owner or person in control
15 of livestock ~~shall~~ may not permit ~~the same livestock~~ to run at large or under herd within the exterior
16 boundaries of ~~any~~ a state district unless the owner or person in control of ~~such the~~ livestock ~~shall~~ first
17 obtains ~~obtain~~ a grazing permit ~~for same~~ from ~~the~~ such state district.

18 (2) The owner or person in control of ~~such~~ livestock running at large or under herd within a state
19 district without a permit from the state district or in excess of ~~such the~~ permit ~~shall be~~ is liable for all
20 damages sustained ~~thereby~~ by any member, permittee, or state district that are a result of the person's
21 unpermitted use of the state district. If ~~any such~~ livestock wrongfully ~~enters~~ enter a state upon premises
22 ~~within such~~ district, the owner or person in control of ~~such the~~ trespassing livestock, who willfully or
23 negligently permits ~~same~~ livestock to run at large within the state district without first obtaining a permit
24 ~~therefor~~ from the state district, ~~shall be~~ is guilty of a misdemeanor and, upon conviction ~~thereof~~, shall be
25 punished by a fine in an amount not less than \$10 or more than \$500. ~~and, in~~ In addition to a fine, the
26 owner or person is ~~said punishment, shall be~~ liable for all damages that are caused by the trespassing
27 livestock ~~sustained thereby to the party entitled thereto~~.

28 (3) This provision ~~shall~~ does not require any person to obtain a grazing permit to graze livestock
29 upon on land that the person owns or controls ~~owned or controlled by him~~ within a ~~such~~ state district if
30 the stock ~~so being~~ grazed ~~is~~ are restrained from running at large within ~~such the~~ state district and from

1 grazing ~~upon~~ on any other lands within the state district."

2

3 **Section 26.** Section 76-16-316, MCA, is amended to read:

4 **"76-16-316. Sale of trespassing livestock.** (1) Upon receipt of the statement referred to in
5 76-16-315, the sheriff shall proceed to advertise and sell at public auction the livestock taken up.

6 (2) The livestock must be sold on 5 days' notice posted at the courthouse of each county in which
7 any portion of the state district lies and in a newspaper of general circulation in the county. The sheriff
8 may require from the state district a sufficient bond, conditioned upon the following:

9 (a) that the state district has used reasonable diligence to discover the owner of the stock and to
10 notify the owner in the premises;

11 (b) that all requirements of law on the part of the state district to be performed in the premises
12 have been performed; and

13 (c) that the sheriff is indemnified against all liability for the sale of the livestock except as to the
14 sheriff's own failure to perform the things required by law."

15

16 **Section 27.** Section 76-16-317, MCA, is amended to read:

17 **"76-16-317. Disposition of sale proceeds.** (1) The proceeds of the sale ~~shall~~ must be applied by
18 the sheriff, after first deducting ~~his~~ the sheriff's costs and expenses, to the discharge of the claims and
19 the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs
20 of the party taking up ~~such the~~ livestock, ~~and the~~ The remainder of the proceeds, if any, may be paid over
21 to the owner of ~~such the~~ livestock, if known, ~~and if~~ If the owner is not known, then ~~such the~~ remainder
22 ~~shall must~~ be deposited with the county treasurer, who shall keep the ~~same remainder of the proceeds~~ in
23 a public fund to be designated state ~~grazing~~ district fund (giving the name of the state district). A separate
24 fund, styled as above, ~~shall must~~ be kept by the county treasurer for each state district ~~of said districts~~
25 within ~~his that~~ county. The county treasurer shall ~~make a record of~~ the number, ~~and type, and brands, if~~
26 ~~any,~~ of animals sold ~~and the brands on same, if any,~~ the amount received for the animals ~~same~~, and the
27 amount of deductions. The record ~~shall must~~ be open to public inspection.

28 (2) ~~Any A~~ person claiming ~~making claim of~~ ownership of the ~~such~~ livestock and submitting proof
29 of ownership to the board of county commissioners ~~at any time~~ within 1 year from date of sale ~~and~~
30 ~~submitting proof of ownership to such board with such claim to the satisfaction of such board shall be is~~

1 entitled to receive any such excess received from the sale of the such livestock, provided the claim is to
2 the satisfaction of the board.

3 (3) Any money received from the sale of the any such livestock ~~which shall~~ that is not be so
4 claimed within 1 year after the such sale must shall be transferred to the general fund of the county ~~at the~~
5 ~~expiration of said period."~~

6
7 **Section 28.** Section 76-16-318, MCA, is amended to read:

8 **"76-16-318. Unlawful recovery of trespassing livestock.** Any person taking or rescuing from the
9 possession of a state ~~grazing~~ district or an agent of a state district ~~thereof~~ any animal taken up and
10 impounded pursuant to 76-16-310 through 76-16-317 is shall be guilty of a misdemeanor and upon
11 conviction ~~thereof~~ shall be punishable by a fine not exceeding \$200."

12
13 **Section 29.** Section 76-16-320, MCA, is amended to read:

14 **"76-16-320. Maintenance of fences.** (1) ~~Regarding fences within the external boundaries of state~~
15 ~~districts, the~~ The cost of construction and maintenance of fence enclosing lands controlled by any
16 member, nonmember, or state district within the external boundaries of the such state district must shall
17 be borne by the such member, nonmember, or state district, unless otherwise provided for in the duly
18 approved bylaws of the such state district.

19 (2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost
20 of construction and maintenance of fence is to be distributed proportionately among the parties affected
21 by the such cost of construction and maintenance of fence, the state district's proportionate share of the
22 ~~such~~ costs and maintenance must shall be financed only by assessments levied by the state district against
23 the permittee members of the state district and upon consent ~~thereto~~ by 55% of the such permittee
24 members."

25
26 **Section 30.** Section 76-16-323, MCA, is amended to read:

27 **"76-16-323. ~~District~~ State district finances.** A state district may:

28 (1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for
29 the purpose of paying leases and operating expenses and fix and determine the amount of assessments
30 to be made on members on a grazing preference basis for the purpose of acquiring lands by purchase or

1 for the purpose of constructing improvements in the state district;
2 (2) set up and maintain a reasonable reserve fund;
3 (3) borrow money and if necessary mortgage the physical assets of a state district to provide for
4 operation and development, provided that at least 80% of the permittee members of the state district
5 consent in writing to the borrowing and the borrowing has been approved by the commission. This
6 subsection does not confer power upon a state district to mortgage the property of the individual members
7 of the state district."

8

9 **Section 31.** Section 76-16-325, MCA, is amended to read:

10 **"76-16-325. Compliance with commission orders required.** (1) If a state district or the directors
11 of a state district fail to comply with an order of the commission, the commission may order a hearing on
12 the order within the state district or county and cite the directors of the state district to appear before the
13 commission.

14 (2) If upon the hearing it appears that the directors refuse to perform the duties of their office as
15 provided in this part and as set forth in the articles of incorporation and the bylaws of the association or
16 refuse to comply with a lawful order of the commission, the directors may be summarily removed from
17 office by the commission, and the state district shall elect new officers. During the period until the
18 election, the commission may operate and manage the affairs of the state district.

19 (3) The expense of operating and managing the affairs of a noncomplying state district must be
20 paid by the noncomplying state district before it may be reinstated."

21

22 **Section 32.** Section 76-16-401, MCA, is amended to read:

23 **"76-16-401. Distribution of grazing preferences.** When a state district is organized, grazing
24 preferences ~~shall~~ must be distributed in the following manner:

25 (1) Any member of a state district owning or controlling dependent commensurate property ~~as~~
26 ~~heretofore defined~~ may be given a grazing preference.

27 (2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or
28 controlling dependent commensurate property, members owning or controlling commensurate property
29 shall have the grazing preference.

30 (3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or

controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, ~~preferring those that have used the range for any 3 years or any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of state districts organized after March 15, 1945,~~ preferring those that have used the range 5 years immediately preceding the organization of the state district ~~such districts.~~"

Section 33. Section 76-16-402, MCA, is amended to read:

"76-16-402. Conversion of temporary permittee lands to dependent commensurate property. (1)

When ~~a~~ such temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by ~~the~~ such permittee within or near the state district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by ~~the~~ such permittee may be considered dependent commensurate property and, upon application, the state district may accordingly grant such permittee membership and grazing preference in the state district providing an application had been made for temporary rights for each of the 5 years.

(2) However, ~~such~~ temporary permits ~~shall at all times be merely~~ are privileges granted from year to year, and their possession does not ~~shall in no event~~ establish a grazing preference right unless ~~such~~ a grazing preference right ~~be~~ is expressly granted by the state district and in the manner ~~herein~~ provided in this part."

Section 34. Section 76-16-403, MCA, is amended to read:

"76-16-403. Procedure if reduction in grazing privileges necessary. (1) If a reduction in grazing privileges becomes necessary, operators with temporary permits will be reduced on a proportionate basis prior to any reduction to any holder of grazing preference.

(2) Reductions of grazing preference for individual members that result from actions beyond the control of the state district or the board of directors of a ~~cooperative~~ state district or as a result of actions or of the failure to take appropriate actions by the holder of the grazing preference in question do not require a general reduction in grazing preference, and the state district may not be compelled to require proportionate reductions in grazing preference, by the membership of the state district."

Section 35. Section 76-16-404, MCA, is amended to read:

1 **"76-16-404. Application for grazing preferences.** Any person entitled to grazing preferences within
2 any state ~~grazing~~ district based on dependent commensurate property or commensurate property ~~must~~
3 ~~shall~~ make application within 1 year after ~~said the state~~ district ~~is shall have been~~ organized to qualify for
4 ~~said grazing~~ preference; ~~provided, however~~ However, all permittees ~~shall~~ must be entitled to benefits
5 accruing under 76-16-401 through 76-16-403."

6
7 **Section 36.** Section 76-16-406, MCA, is amended to read:

8 **"76-16-406. Transfer of grazing preferences.** (1) Upon application by a permittee, the state district
9 with the approval of the commission may allow a grazing preference based on ownership or control of
10 dependent commensurate or commensurate property to be transferred to other property of sufficient
11 commensurability. However, in any transfer of grazing preference from dependent commensurate or
12 commensurate property controlled but not owned by the applicant, the applicant must have had control
13 and use of the dependent commensurate or commensurate property and the grazing preference
14 appurtenant to the property for 5 consecutive years and must have established and maintained the
15 livestock operation upon which the dependency was established by use or priority immediately prior to the
16 application for transfer.

17 (2) In addition, the transfer may not interfere with the stability of livestock operations or with
18 proper range management and may not affect adversely the established local economy. A transfer may
19 not be allowed without the written consent of the owner or owners of the dependent commensurate or
20 commensurate property from which the transfer is to be made and the owner or owners of any
21 encumbrances on the property. A transfer is not effective until approved by the commission.

22 (3) All expenses involved under the application must be borne by the applicant."
23

24 **Section 37.** Section 76-16-407, MCA, is amended to read:

25 **"76-16-407. Processing of application for transfer.** (1) When an application for transfer is
26 presented to the board of directors of a state district, the secretary of the state district upon the direction
27 of that board shall give notice ~~thereof~~, setting forth in general the application and the time and place of
28 a hearing ~~thereon~~ on the application as fixed by the board. A copy of the notice ~~shall~~ must be given or
29 mailed to the applicant and ~~shall~~ must be published at least once a week for 2 successive weeks prior to
30 the hearing in a newspaper published or generally circulated within the state district, ~~and the~~ The notice

1 ~~shall~~ must also be posted for at least 2 full weeks prior to the hearing in three public places within the
2 state district.

3 (2) The date of the hearing must be at least 15 days from the first publication of the notice. At
4 the hearing the directors shall fully hear and determine the application and any objections to the application
5 ~~thereto~~."

6

7 **Section 38.** Section 76-16-408, MCA, is amended to read:

8 **"76-16-408. Effect of transfer of grazing preference.** Upon the allowance of a transfer under
9 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference
10 to the extent of the grazing preference transferred."

11

12 **Section 39.** Section 76-16-409, MCA, is amended to read:

13 **"76-16-409. Transfer of underlying property.** (1) When the land to which a grazing preference is
14 attached changes its control or ownership, the grazing preference changes with the land and the person
15 to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

16 (2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the grazing
17 preferences may be revoked by the state district."

18

19 **Section 40.** Section 76-16-410, MCA, is amended to read:

20 **"76-16-410. Compensation to state district for range improvements.** Subsequent lessees or
21 owners of land shall compensate a state district for the value of range improvements constructed with the
22 consent of the owner upon lands leased by the state district. The value ~~shall~~ must be the value at the
23 expiration date of the lease. If the owner and the state district cannot agree as to the value, the state
24 district may either remove or abandon the improvement. If the subsequent lessee and the state district
25 cannot agree as to the value, it ~~shall~~ must be fixed by the commission ~~department~~."

26

27 **Section 41.** Section 76-16-411, MCA, is amended to read:

28 **"76-16-411. Grazing permits to owners of land not controlled by state district.** (1) When any land
29 is situated within the boundaries of a state district and is not leased or controlled by ~~said~~ the state district
30 and not surrounded by a legal fence, any person owning or controlling ~~such these~~ lands ~~shall have~~ has the

1 right to obtain a grazing permit from the state district, the size of which ~~shall~~ must be determined by the
2 carrying capacity of ~~such the~~ land, full consideration being given for location of necessary stock water.
3 The use of ~~such the~~ permit ~~shall be~~ is subject to all regulations by the state district.

4 (2) If the person owning or controlling ~~such the~~ land declines to secure ~~such a~~ permit or fails to
5 lease ~~such the~~ land to the state district at a fair lease rental and fails to fence ~~such the~~ land at ~~his own~~
6 the person's expense, ~~he the person shall~~ is not be entitled to recover damages for trespass by stock
7 grazing under permit, but the state district ~~shall~~ may not issue a permit to use the carrying capacity of
8 ~~such the~~ land."

9

10 **Section 42.** Section 76-16-412, MCA, is amended to read:

11 **"76-16-412. Revocation of grazing preferences upon failure to obtain permits, pay fees, or obey**
12 **rules.** (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to
13 pay grazing fees, the state district shall notify the owner of the land by ~~registered or~~ certified mail that the
14 grazing preference attached to the land will be revoked unless the owner pays the usual grazing fees to
15 the state district within 60 days from the time of receipt of the notice. The state district may revoke the
16 grazing preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

17 (2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to
18 obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the
19 permittee and owner of the land by ~~registered or~~ certified mail that the grazing preference attached to the
20 land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the
21 rules laid down by the state district within 60 days from the time of receipt of the notice. The state district
22 may revoke the grazing preference if the permittee or owner fails to pay the charges or comply."

23

24 **Section 43.** Section 76-16-413, MCA, is amended to read:

25 **"76-16-413. Effect of revocation.** (1) When a grazing preference is revoked, it is detached from
26 the dependent commensurate or commensurate property to which it was formerly appurtenant and it
27 immediately shifts to the state district. A revocation includes all rights, privileges, and authorities
28 associated with a grazing preference.

29 (2) The state district may then allocate it to either dependent commensurate or commensurate
30 property in the manner provided by its bylaws."

1

2 **Section 44.** Section 76-16-414, MCA, is amended to read:

3 **"76-16-414. Equalization of state district assets.** (1) Whenever a state district possesses reserves,
4 the values of which are greater than its liabilities, and the state district determines that a part of the
5 reserves is in excess of its reasonable needs to operate the state district, the state district may refund to
6 the permittee members their proportionate share of the reserves as determined at the last annual
7 accounting.

8 (2) Whenever a state district possesses reserves and physical assets, the values of which are
9 greater than its liabilities, and a permittee member loses a grazing preference or any portion of a grazing
10 preference, the permittee member is entitled to receive a proportionate share of the value of the excess
11 from the state district, as determined by the annual accounting of the state district. Valuation must be as
12 prescribed by the bylaws of the state district. The state district may set off the amount of any claim it may
13 have against a former member.

14 (3) Whenever a new member receives a grazing preference, the new member shall, as a condition
15 of receiving the grazing preference, pay to the state district the value of the equitable interest in the
16 physical assets and reserve fund that accrues to the new member by virtue of membership. The value
17 must be determined at the time of receiving a grazing preference, as prescribed by the bylaws of the state
18 district, and upon the basis of the determination of value of physical assets and reserves made at the last
19 annual accounting."

20

21 NEW SECTION. **Section 45. Repealer.** Section 76-16-105, MCA, is repealed.

22

23 NEW SECTION. **Section 46. Effective date.** [This act] is effective upon passage and approval.

24

- END -